IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

Crl.Rev.Pet.No. 41 of 2000()

SC.33/1997 of SESSIONS COURT, KASARAGOD
.....

REVN. PETITIONER: ACCUSED

T.RAVI, S/O. KUNHIRAMAN,
ADUKKATHIL VEEDU,
THOKKONAMOTTA, PANAYAL AMSOM,
KASARAGOD DIST.

BY ADV. SRI.SURESH KUMAR KODOTH

RESPONDENTS: RESPONDENTS COMPLAINANT & STATE
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1. **STATE OF KERALA, REP.BY**
THE CIRCLE INSPECTOR OF POLICE,
KASARAGOD THROUGH.

2. **THE PUBLIC PROSECUTOR,**
HIGH COURT OF KERALA,
ERNAKULAM/

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 05/10/2007 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

tss

CRRP. 41/2000

ORDER ON CRL.MP. NO.159/2000 IN CRRP. 41/2000

DISMISSED

05.10.2007 **SD/- K.R.UDAYABHANU, JUDGE**

/TRUE COPY/

P.S. TO JUDGE

tss

K.R. UDAYABHANU, J.

CRL.R.P.NO. 41 OF 2000

DATED THIS THE 5TH OCTOBER 2007

ORDER

The revision petitioner is the accused in S.C.No.33/1997 pending before the Sessions Court(Special Court) Kasaragod with respect to the offences under Sections 341, 323 of the Indian Penal Code and Section 3(i)(x) of the Scheduled Caste & Scheduled Tribes (Prevention of Atrocities) Act, 1989(for short 'the Act') on the allegation of assaulting and outraging the modesty of the de facto complainant who is a person belonging to the scheduled caste community by the accused/revision petitioner who is not a member of the scheduled caste community. The trial had already commenced and it was at that time the accused has disputed, the authority of the court to take cognizance of the offence as the investigation was conducted by the Circle Inspector of Police instead of Deputy Superintendent of Police concerned as mandated by Rule 7 of the S.C. &S.T.(Prevention of Atrocities) Rules (for short 'the Rules'). The trial court dismissed the preliminary objection vide order dated 29-11-1999 which is challenged herein.

2. I find that the court below has relied on the decisions on the point that irregularities or illegalities committed during the

investigation as such is no ground to acquit the accused unless it is established that prejudice has been caused. I find that the finding of the court below cannot be upheld in view of the mandate of Rule 7 of the S.C. & S.T.(Prevention of Atrocities) Rules which specifies that an offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along the right lines within the shortest possible time. The matter has been considered by this Court in **Rajesh v. Sate of Kerala, 2007(1) K.L.T.234** and has held positively that the Circle Inspector of Police is not entitled to conduct the investigation for the offence under the Act and this Court has considered the preceding decisions on the point and has quashed the proceedings for the offence under the Act. In the circumstances, I find that the proceedings pending before the Special Court for the offence under the Act is liable to be quashed. All the same, the offence alleged with respect to Indian Penal Code has to be tried by the competent court.

The Special judge is directed to transmit the case records to the concerned Chief Judicial Magistrate for trial and disposal of the rest of the offences. Send back the records to the Special Court, Kasaragod.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.R.P. NO. 41 of 2000

ORDER

5-10-2007